

## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own )  
motion, seeking to establish an interim policy ) Application No. C-3415  
on eligible telecommunications carrier )  
standards )

### COMMENTS OF NEXTEL PARTNERS

#### INTRODUCTION

NPCR, Inc., d/b/a Nextel Partners, ("Nextel Partners") submits these comments pursuant to the *Order Opening Docket* issued by the Nebraska Public Service Commission ("Commission") on May 4, 2005 ("*Interim Guidelines Opening Order*"). Nextel Partners holds Federal Communications Commission ("FCC") licenses to provide commercial mobile radio services ("CMRS") in the State of Nebraska, and has sought designation by the Commission as a federal eligible telecommunications carrier ("ETC") in certain areas of Nebraska.<sup>1</sup> Nextel Partners has been designated as an ETC in fifteen jurisdictions.<sup>2</sup>

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<sup>1</sup> *In the Matter of the Amended Application of NPCR, Inc., d/b/a Nextel Partners, Eden Prairie, Minnesota, seeking designation as an eligible telecommunications carrier that may receive universal service support*, Application No. C-2932, Opinion and Findings (Feb. 10, 2004) (Comm'rs Lowell C. Johnson and Anne C. Boyle dissenting) ("*Nextel Partners ETC Denial Order*"); *In the Matter of the Amended Application of NPCR, Inc., d/b/a Nextel Partners, Eden Prairie, Minnesota, seeking designation as an eligible telecommunications carrier that may receive universal service support*, Application No. C-2932, Motion for Rehearing Denied (May 4, 2004), appeal pending, *NPCR, Inc. v. Boyle*, No. 4:04-CV-3236 (JFB/TDT) (D.Neb. filed Jul. 8, 2004).

<sup>2</sup> *In the Matter of Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecomms. Carrier*, CC Docket 96-45, *Order*, 19 FCC Rcd. 16530, DA 04-2667 (rel. Aug. 25, 2004); *In re NPCR, Inc. d/b/a Nextel Partners*, Docket No. 199 IAC 39.2(4), *Order*, (Iowa Util. Bd., May 15, 2003); *In the Matter of the Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecomms. Carrier*, Docket NO. 03-141-U, *Order No. 4*, (Arkansas Pub. Util. Comm'n, Dec. 22, 2003); *In the Matter of the Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecomms. Carrier*, Docket No. 03-0 104, *Decision and Order No. 21089* (Hawaii Pub. Util.

In the *Opening Opinion*, the Commission proposes to adopt interim guidelines that will impose new requirements for the designation of ETCs in Nebraska and establish new annual reporting requirements on carriers already designated as ETCs in Nebraska (the "Interim Guidelines"). The Interim Guidelines are nearly identical to Proposed Rules set forth by the Commission in its April 26, 2005 *Order Opening Docket and Seeking Comment*, Rule and Regulation No. 165 ("*Rulemaking Opening Order*"). These Proposed Rules are in turn substantially derived from rules promulgated by the FCC in its March 17, 2005 Report and Order ("*March 2005 Order*").<sup>3</sup> The Commission's goal in proposing the Interim Guidelines appears to be to ensure that ETC designation and certification rules consistent with the FCC's rules and policies are in place pending the effective date of the Proposed Rules.

## **COMMENTS**

### **I. THE INTERIM GUIDELINES ARE UNNECESSARY**

The Commission's apparent goal of ensuring that ETC designation and certification rules consistent with the FCC's rules and policies are in place pending the effective date of the Proposed Rules is not unreasonable. However, Nextel Partners suggests that the adoption of the Interim Guidelines is unnecessary, because there is no reason to expect that the effective date of

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Comm'n, June 25, 2004); *In the Matter of the Application of NPCR, Inc. d/b/a Nextel Partners for Designation*, Cause No. 41052-ETC-43, *Approved*, (Indiana Util. Reg. Comm'n, March 17, 2004); *In re Request for Authority for Designation as an Eligible Telecomms. Carrier*, Docket U-27289, *Order No. U-27289*, (Louisiana Pub. Util. Comm'n, June 9, 2004); *Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecomms. Carrier*, Docket No. 03-UA-0256, *Order*, (Mississippi Pub. Serv. Comm'n, (Sept. 29, 2003); *Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecomms. Carrier*, 8081-TI-101, *Final Decision* (Wisconsin Pub. Serv. Comm'n, Sept. 30, 2003); *Petition of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in the State of Kentucky*, Case No. 2003-00143, *Order* (Kentucky Pub. Serv. Comm'n, Dec. 16, 2004).

<sup>3</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC 05-46 (rel. Mar. 17, 2005).

the Proposed Rules themselves will be delayed. Moreover, there is no compelling reason to adopt interim rules that have not been subject to full consideration by the Commission.

Indeed, the adoption of the Interim Guidelines could make the ETC designation and reporting process in Nebraska more confusing and difficult for the Commission and ETCs alike. For example, it is not unlikely that in response to public comments, the Commission will modify the Proposed Rules instead of adopting them in their current form. If that were to happen, ETC applicants or already-designated ETCs with ongoing reporting obligations could be required first to comply with the current authority concerning ETC designation and reporting in Nebraska, then with the Interim Guidelines, and finally with the Proposed Rules as adopted. This would cause unnecessary complexity, waste the Commission's resources, and place unnecessary administrative burdens on ETCs and ETC applicants. Accordingly, Nextel Partners respectfully suggests that the adoption of the Interim Guidelines is unnecessary.

## **II. NEXTEL PARTNERS' COMMENTS ON THE PROPOSED RULES APPLY TO THE INTERIM GUIDELINES**

Because the Interim Guidelines and Proposed Rules are nearly identical, Nextel Partners' comments on the Proposed Rules apply with equal force to the Interim Guidelines. Accordingly, Nextel Partners adopts by reference its Comments concerning the Proposed Rules (*see Attachment A* hereto) and hereby applies them to the Interim Guidelines. Those comments are summarized here for administrative convenience.

First, Nextel Partners notes that the Interim Guidelines are appropriately consistent with the fundamental universal service principles of competitive and technological neutrality.

However, Interim Guidelines 2.j and 6.h should be modified, because they contain a definitional problem. Under 47 U.S.C. § 332(c)(8), only the FCC has the authority to require a

CMRS provider to provide equal access, and so the term "Commission" in Interim Guidelines 2.j and 6.h should be replaced with the words "Federal Communications Commission."

Interim Guidelines 2.f and 6.a, concerning the Five-Year Service Quality Improvement Plan, should also be modified. Carriers do not make plans for capital expenditures or other use of federal universal service support more than one or two years into the future. In addition, wireless carriers cannot provide detailed facilities and financial information on a wire center level, because their network is not engineered around wire centers, and they do not track capital investment, coverage, or demand on a wire center basis.

Interim Guidelines 2.h and 6.3, which require a certification regarding compliance with "applicable service quality standards and consumer protection rules," should also be modified. Wireless carriers operating in Nebraska are generally not subject to Nebraska state service quality standards or consumer protection requirements, so for wireless carriers, there are no "applicable" rules with which to comply. To conform the Interim Guidelines to federal standards, the Commission should add language that specifies that for a wireless ETC or ETC applicant, a commitment to comply with the CTIA Consumer Code satisfies the requirement to comply with applicable consumer protection and service quality standards.

Interim Guideline 4, which requires the Commission to conduct a creamskimming analysis when an ETC applicant seeks designation below the study area level of a rural telephone company, should be amended to explain how the creamskimming analysis will be conducted. It should specify that the creamskimming analysis will include: 1) a population density analysis as done in *Virginia Cellular*; and 2) a consideration of whether the incumbent local exchange carrier has disaggregated support.

Certain aspects of Interim Guideline 6.b should be reconsidered in light of the federal outage reporting requirements set forth in the FCC's *Outage Order*.<sup>4</sup> In addition, the Commission should ensure that whatever information ETCs report about outages is filed confidentially, and the Commission should provide a detailed definition of the term "affected" as used in the last phrase of Interim Guideline 6.b.

Finally, Interim Guideline 6.h should be clarified: the reference to Section 54.201(a)(2) should be replaced with a reference to Section 54.202(a)(2), one of the new FCC rules, which addresses ETCs' ability to remain functional in emergency situations.

### **CONCLUSION**

There does not appear to be any need for the Commission to adopt Interim Guidelines – doing so could cause more administrative burdens than it resolves. If the Commission does determine that Interim Guidelines are necessary, it should modify the proposed Interim Guidelines in the ways set forth in Nextel Partners' Comments regarding the Proposed Rules.

Respectfully submitted this 6<sup>th</sup> day of June, 2005.

**NPCR, INC., d/b/a NEXTEL PARTNERS**

By \_\_\_\_\_  
Loel P. Brooks, #15352  
BROOKS, PANSING BROOKS, PC, LLO  
1248 "O" Street, Suite 984  
Lincoln, NE 68508-1424  
(402) 476-3300

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<sup>4</sup> *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-188 (rel. Aug. 19, 2004) ("*Outage Order*").

Philip R. Schenkenberg  
Andrew M. Carlson  
BRIGGS AND MORGAN, P.A.  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
(612) 977-8400

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he caused the foregoing Comments to be filed by electronic delivery and an original and five (5) paper copies to be filed by hand delivery on this 6<sup>th</sup> day of June, 2005, to the following:

Andrew Pollock  
Executive Director  
Nebraska Public Service Commission  
1200 "N" Street, Suite 300  
Lincoln, NE 68509-4927  
[andy.pollock@psc.ne.gov](mailto:andy.pollock@psc.ne.gov)

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Loel P. Brooks

Attachment A

COMMENTS OF NEXTEL PARTNERS, INC.

RULE AND REGULATION NO. 165